

**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
HBK NV LLC)	File Nos. BTCCDT-20091118ABB, <i>et al.</i>
Transferor)	
)	
and)	
)	
C. Thomas McMillen)	
Transferee)	
)	
For Transfer of Control of)	
NVT Wichita Licensee, LLC, <i>et al.</i>)	

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2010

Released: March 12, 2010

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it the unopposed applications listed in the attached Appendix seeking consent to transfer control of licensee subsidiaries of NVT License Holdings, LLC (“NVT”) from HBK NV LLC (“HBK”) to C. Thomas McMillen (“McMillen”). In connection with the applications, McMillen has requested three continuing satellite exemptions to the television multiple ownership rule pursuant to Note 5 of Section 73.3555.¹ For the reasons set forth below, we grant the applications and the requested satellite exemptions.

II. BACKGROUND.

2. On September 28, 2009, the Commission approved the set of applications by which NVT emerged from Chapter 11 bankruptcy.² Currently, NVT, has two classes of membership units: Class A Units (voting) and Class B Units. Class B members (other than those who are also Class A members) are insulated in accordance with Commission requirements. Presently, HBK holds 100 Class A Units and 1 Class B Unit. McMillen holds 99 Class B Units. There are no other members.

3. The proposed transfer of control from HBK to McMillen will be accomplished by (a) the redemption of 99 of HBK’s Class A Units and its Class B Unit, and (b) the assignment of HBK’s remaining 1 Class A unit to McMillen pursuant to a Redemption and an Assignment Agreement between the parties. (Following the transfer of control, McMillen will be the sole member of the licensee.)

¹ 47 C.F.R. §73.3555(b)(2002).

² See File Nos. BALCDT-20090904AAI, AAK, AAO, AAP, ABA, ABF, ABG, ABL and BALTTA-200909ABB.

4. The transaction will not result in the creation of any new ownership combinations implicating our multiple and cross-ownership rules. However, the applicants have requested Commission consent to continue operating station KSNC(TV), Great Bend, Kansas as a satellite of KSNW(TV), Wichita, Kansas and to continue operating KHAW-TV, Hilo, Hawaii, and KAIH-TV, Wailuku, Hawaii as satellites of KHON-TV, Honolulu, Hawaii.

III. DISCUSSION

5. In *Television Satellite Stations*,³ the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with the three-part “presumptive” satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.⁴ If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.

A. The Kansas Stations.

6. As stated above, the applicants have requested Commission consent to continue operating station KSNC(TV), Great Bend, Kansas as a satellite of KSNW(TV), Wichita, Kansas.⁵ For the reasons stated below, we grant the request.

7. The digital transition has occurred and analog City Grade contours no longer exist. Instead, full-power television stations have Principal Community contours that serve much larger areas than their former analog City Grade contours. As a result, the digital Principal Community contour is not an equivalent standard to use in determining whether a proposed satellite station qualifies for the presumptive satellite exemption to the duopoly rule. Regardless, prior to the digital transition, there was no City Grade Contour overlap between KSNC(TV) and KSNW(TV).⁶

8. With respect to the second criterion, NVT, demonstrates by relying on the Commission’s transmission test that the relevant area is underserved. The “transmission” test deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellite’s community of license.⁷ KSNC(TV) is the only full-power television station licensed to Great Bend, Kansas.

9. Regarding the third criterion, an applicant must show that there is no alternative operator ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.⁸ In support of its satellite request, NVT has submitted a letter from Brian E. Cobb, President of CobbCorp.

³ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4215 (1991)(subsequent history omitted)(“*Television Satellite Stations*”).

⁴ *Id.* at 4213-4214.

⁵ Stations KSNG(TV), Garden City, Kansas, and KSNK(TV), McCook, Nebraska, also rebroadcast KSNC(TV), but do not have any contour overlap with any of the other co-owned stations and, therefore, no ownership waiver is required. These stations also maintain their own studios. Therefore, no waiver of the main studio rule is required either. *See* 47 C.F.R. § 73.1125 (2008).

⁶ File No. BTCCDT-20091118ABB, Attachment 1, Exhibit E-1.

⁷ *Id.* at 4215.

⁸ *Id.*

(“Cobb”), a media brokerage and investment banking firm specializing in broadcast transactions, which demonstrates that there are no alternative operators ready and able to purchase and operate the proposed satellite as a full-service station. Cobb states that although the market is ranked 67th according to Nielsen, the population is not growing and it is ranked 84th according to BIA in terms of television advertising revenue. Cobb previously reviewed the market in 2007, when it was ranked 78th and television advertising revenue was \$12 million higher than it is now, indicating a significant revenue decline in less than three years.

10. Cobb states that there are five independent owners of full power stations in the market and that all four major network affiliates use satellites to cover the DMA. He contends that, with such a high level of competition from group-owned stations in the Wichita-Hutchinson market, it would not be viable for any of the current satellite stations to be forced to compete as stand-alone stations with the other full power stations that all have network affiliations.⁹ He further states that the newly independent stations would not have a major network affiliation available and without one they would not be capable of viably competing for audience and revenue. According to Cobb, none of the current satellite stations provides a signal strong enough to cover the market or to reach Wichita, the largest city in the DMA. Cobb states that the three satellites combined cover less than 25% of the population in the DMA, which is one of the largest in the country based on square mileage.

11. Cobb alleges that, if any of the stations were forced to operate as a stand-alone operation and compete in the market, not only would it suffer financially, but the viewers in its coverage area would be denied network programming, as well as news and weather coverage pertinent to their lives. Cobb argues that the stations are good examples of why certain outlets should operate as satellites. He contends that because the other three leading stations in the market all employ satellites, KSNW(TV) would be at a competitive disadvantage if it was not able to do so. He argues that the level of service the licensee provides for the entire community would be hampered. He concludes by saying that, as a broker, he would be reluctant to offer these marginalized stations for sale knowing that a prospective buyer would be hard pressed to find a successful format and that it is highly unlikely that a viable operator could be found to provide full service operations to the outlying communities. Based on the information presented, we are satisfied that NVT has demonstrated the unfeasibility of finding an out-of-market purchaser willing to operate the station on a stand-alone basis.

12. While the instant request does not satisfy the Commission’s presumptive satellite standard,¹⁰ this proposal can be evaluated under an *ad hoc* analysis. KSNC(TV) has a long history of operating as a satellite of KSNW(TV) and there was historically no City Grade overlap between the stations. KSNC(TV) is the only station licensed to the very small community of Great Bend, Kansas. As explained by Cobb, all of the network affiliates in this geographically large, sparsely populated and economically distressed and declining DMA rely on satellites to reach their viewers. In light of these factors, we believe that continued satellite authorization is warranted in this instance.¹¹

B. The Hawaii Stations.

13. In its applications, NVT has also sought Commission consent for KHAW-TV, Hilo, Hawaii and KAIL-TV, Wailuku, Hawaii, to continue to operate as satellites of Fox-affiliated KHON-TV,

⁹ Although NVT only asked for a satellite exemption for KSNC(TV), Cobb included all three stations in his analysis.

¹⁰ *Supra* ¶ 4.

¹¹ Although Cobb did not raise it in his letter, we do take note of the applicant’s recent emergence from bankruptcy and the possible issues that this might raise in the current economic environment in trying to raise capital to convert a satellite station to a stand-alone station at this time.

Honolulu, Hawaii. For the reasons stated below, we grant the request.

14. As stated above, the first criterion of the presumptive standard, no City Grade overlap, is not relevant in the digital environment. However, there was no City Grade overlap between the stations prior to the digital transition. The second criterion of the presumptive standard, which requires that a station serve an underserved area, can be satisfied by the “reception test.” The reception test requires a showing that 25% or more of the area within the satellite’s Grade B contour, but outside of the parent’s Grade B contour, receives four or fewer television services, not counting the proposed satellite station. Following the digital transition, stations no longer have Grade B contours. Instead, following the digital transition, the equivalent of the analog Grade B service contour is the noise limited service contour.¹²

15. In the showing submitted by NVT, within the relevant noise limited service contour overlap area for KHAW-TV and its parent station, 47.3% of the area is served by four or fewer television services. NVT argues that this means that KHAW-TV meets the second criterion. However, within the relevant noise limited service contour area for KAIL-TV and its parent station, only 14.4% of the area is served by four or fewer television services. NVT concedes that KAIL-TV does not meet the second criterion, but argues that there are compelling considerations in favor of continuing satellite authority.

16. NVT states that most of the other stations serving both stations’ area of contour overlap are either satellite or translator stations rebroadcasting the signals of main stations located on Oahu. NVT argues that the ABC, NBC, and CBS affiliates all rely on satellite stations licensed to Maui in order to serve these areas. NVT contends that Hawaii’s unique geographical features, including its rugged terrain and the long distances between the islands, and the fact that the full-power stations are concentrated on Oahu, where the largest population centers are located, make it virtually impossible to reach the entire DMA without the use of satellites.

17. In regard to the third criterion, NVT has submitted an additional letter by Brian E. Cobb of CobbCorp (“Cobb”), demonstrating that there are no alternative operators ready and able to purchase and operate the proposed satellite as a full-service station. In his letter, Cobb states that the Honolulu market is ranked as the 72nd largest DMA, but is composed of several islands in addition to Oahu, on which Honolulu is located. He points out that the various islands include “difficult and hilly terrain” and states that is impossible for Honolulu stations to serve the entire DMA without satellite facilities on the other islands. Cobb states that all of the network affiliates licensed to Honolulu rely on satellites to cover the DMA.

18. Cobb also argues that it would be impossible for any of the stations that currently operate as satellites to adequately serve the DMA because they do not cover the city of Honolulu, which is the financial hub of the DMA and contains the majority of the population. He argues that because the Honolulu market has eight outlets in a medium sized market and estimated television advertising revenue of barely over \$50,000,000, it would not be practical for any of the satellite stations to compete with full power stations that have network affiliations.

19. Cobb argues that with no network affiliations available, and over-the-air coverage for only a limited percentage of the total DMA population, attempting to operate either of the satellites as a stand-alone station would be futile. He believes that if either of the stations were forced to be a stand-

¹² *Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, ET Docket No. 05-182, 20 FCC Rcd 19504, 19507, ¶3 (“For digital television stations, the counterpart to the Grade B signal intensity standards for analog television stations are the values set forth in Section 73.622(e) of the Commission’s Rules describing the DTV noise-limited service contour.”).

alone facility, not only would it suffer financially, but viewers in their coverage area would be denied network programming, as well as the news and weather coverage that they now receive from KHON-TV.

20. Cobb concludes by saying that, as a broker, he would be reluctant to offer these stations for sale knowing that a prospective buyer would be hard pressed to find a successful format and that it is highly unlikely that a viable operator could be found to provide a full service operation. Based on the information presented, we are satisfied that NVT has demonstrated the unfeasibility of finding an out-of-market purchaser willing to operate the station on a stand-alone basis.

21. While the instant request does not satisfy the Commission's presumptive satellite standard,¹³ this proposal can be evaluated under an *ad hoc* analysis. Both stations have a long history of operating as a satellite of KHON-TV; there was no prior City Grade contour overlap between the stations, and there is currently no principal community contour overlap between them. Although only one station arguably meets the reception test because other stations do serve the area where the noise limited contours of the parent and satellite stations overlap, those stations are predominately either satellites themselves or translators. As explained by Cobb, all of the other network affiliates in this geographically large and geographically unique DMA rely on satellites to reach their viewers. In light of these factors, we believe that continued satellite authorization is warranted in this instance.¹⁴

IV. CONCLUSION

22. Based on our review of the information submitted, we find that NVT License Holdings, LLC has set forth information sufficient to warrant continued satellite operation for KNSC(TV), KHAW-TV, and KAIH-TV under our *ad hoc* analysis. We, therefore, find that the continued operation of these stations as satellites would be in the public interest. In view of the foregoing, and having determined that the applicants are qualified in all respects, we find that a grant of the applications to transfer control of the licensee subsidiaries of NVT License Holdings, LLC from HBK NV LLC to C. Thomas McMillen will serve the public interest, convenience, and necessity.

23. ACCORDINGLY, IT IS ORDERED That the request of NVT License Holdings, LLC to operate station KSNC(TV), Great Bend, Kansas, pursuant to the satellite exemption to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

24. ACCORDINGLY, IT IS FURTHER ORDERED That the request of NVT License Holdings, LLC to operate stations KHAW-TV, Hilo, Hawaii and KAIH-TV, Wailuku, Hawaii, pursuant to the satellite exemption to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

¹³ *Supra* ¶ 4.

¹⁴ Although Cobb did not raise it in his letter, as in the case of KSNC(TV), we do take note of the applicant's recent emergence from bankruptcy and the possible issues that this might raise in the current economic environment in trying to raise capital to convert a satellite station to a stand-alone station at this time.

25. ACCORDINGLY, IT IS FURTHER ORDERED That the applications to transfer control of eight licensee subsidiaries of NVT License Holdings, LLC from HBK NV LLC to C. Thomas McMillen File Nos.BTCCDT-20091118ABB, *et al.* ARE GRANTED.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

¹⁵ Class A station File No. BALTTA-200909ABB

APPENDIX

Station	Community	ID	File No.
KSNW(TV)	Wichita, KS	72358	BTCCDT-20091118ABB
KSNC(TV)	Great Bend, KS	72359	BTCCDT-20091118ABC
KSNG(TV)	Garden City, KS	72361	BTCCDT-20091118ABD
KSNK(TV)	McCook, NE	72362	BTCCDT-20091118ABE
KSNT(TV)	Topeka, KS	67335	BTCCDT-20091118AAW
KHON-TV	Honolulu, HI	4144	BTCCDT-20091118AAE
KAIL-TV	Wailuku, HI	4145	BTCCDT-20091118AAF
KHAW-TV	Hilo, HI	4146	BTCCDT-20091118AAG
WIAT(TV)	Birmingham, AL	5360	BTCCDT-20091118AAC
KOIN(TV)	Portland, OR	35380	BTCCDT-20091118AAK
WKBN-TV	Youngstown, OH	73153	BTCCDT-20091118ABH
WCJL(TV)	Savannah, GA	37174	BTCCDT-20091118AAV
KIMT(TV)	Mason City, IA	66402	BTCCDT-20091118AAJ